



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC - 3. 2015

John Pomeranz, Esq.  
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1726 M Street NW  
Suite 600  
Washington DC 20036-4523

RE: MUR 6987  
(formerly RR 15L-13)  
Florida Freedom PAC  
and Gihan J. Perera, in his  
official capacity as treasurer

Dear Mr. Pomeranz:

On May 5, 2015, the Federal Election Commission ("the Commission") notified your clients, Florida Freedom PAC and Gihan J. Perera, in his official capacity as treasurer (the "Committee"), that it had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that your clients may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). At that time, we also provided your clients with a copy of the referral document received by the Commission's Office of the General Counsel. The referral concerned the failure to file or untimely file thirteen 24-Hour Reports for 187 independent expenditures and eleven 48-Hour Reports for 194 independent expenditures totaling \$604,423.73. On July 8, 2015, we received your clients' response to the referral.

On November 19, 2015, the Commission found reason to believe that your clients violated 52 U.S.C. § 30104(g), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

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If the Committee is interested in engaging in pre-probable cause conciliation, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. No action by the Commission or any person and no information derived in connection with any conciliation attempt by the Commission may be made public by the Commission without the written consent of the respondent and the Commission. 52 U.S.C. § 30109(a)(4)(B). The Commission may proceed to the next step in the enforcement process if the Committee is not interested in pre-probable cause conciliation or a mutually acceptable conciliation agreement cannot be reached within 60 days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel  
Chair

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6987**

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5 **RESPONDENT:**

Florida Freedom PAC  
and Gihan J. Perera  
in his official capacity as treasurer

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9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election  
11 Commission (the "Commission") in the normal course of carrying out its supervisory  
12 responsibilities, *see* 52 U.S.C. § 30109(a)(2) (formerly 2 U.S.C. § 437g(a)(2)). Specifically, this  
13 matter focuses on Florida Freedom PAC's ("FFPAC") failure to file or timely file 24-Hour and  
14 48-Hour Reports of independent expenditures ("IE") totaling \$604,423.73 during the 2012  
15 election cycle.<sup>1</sup> While FFPAC acknowledges "some failures to file complete or timely reports,"  
16 it maintains that it was "impossible to provide perfect reporting in the timeframe required" given  
17 the nature of its activity."<sup>2</sup> However, FFPAC inaccurately characterizes the reporting of the IEs  
18 included in the referral. FFPAC did not provide good faith estimates of this activity; it either  
19 completely failed to report hundreds of 2012 IEs, or reported them well after the 2012 primary  
20 and general elections. Based on the available information, the Commission has determined to  
21 open a matter under review ("MUR") and find reason to believe Florida Freedom PAC and  
22 Gihan J. Perera in his official capacity as treasurer violated 52 U.S.C. § 30104(g) by failing to  
23 file IE reports, or filing them untimely.

<sup>1</sup> Reports Analysis Division ("RAD"), Referral of Florida Freedom PAC, 15L-13 (May 5, 2015) ("Referral"), incorporated herein by reference. The Referral initially reflected independent expenditures totaling \$612,636.77. RAD subsequently adjusted the total figure to \$604,423.73 after discovering that some independent expenditures were referenced in error.

<sup>2</sup> Committee Resp. at 1 (June 30, 2015).

## II. FACTS

FFPAC is an independent expenditure-only political committee registered with the Commission since May 11, 2012.<sup>3</sup> RAD identified 381 IEs totaling \$604,423.73 for which FFPAC either did not file 24- and 48-Hour Notices or filed them late.<sup>4</sup>

Type of Notice	Report on which Expenditure disclosed on Schedule E	Number of Independent Expenditures involved	Number of Notices that were not filed	Number of Notices not timely filed	Cumulative Amount
48-Hour	Amended 2012 July Quarterly Report	1	1	N/A	\$210,915.52
48-Hour	Amended 2012 October Quarterly Report	193	10	N/A	\$319,077.65
24-Hour	Amended 2012 30-Day Post-General Report	187	7	6	\$74,430.56
	<b>Totals</b>	381	18	6	\$604,423.73

### A. Missing 48-Hour Reports Stemming from the Amended 2012 July Quarterly Report

On October 11, 2012, the Committee filed an Amended 2012 July Quarterly Report, covering the period from April 1, 2012, to June 30, 2012, which included a Schedule E (Itemized Independent Expenditures) disclosing three IEs totaling \$279,445.52, made in support of one federal candidate.<sup>5</sup> On January 10, 2013, RAD sent the Committee a Request for Additional Information ("RFAI") regarding its failure to file a 48-Hour Notice to support one independent expenditure totaling \$210,915.52.<sup>6</sup> On March 19, 2013, the Committee responded to the RFAI

<sup>3</sup> See Statement of Organization (May 11, 2012), available at <http://docquery.fec.gov/pdf/230/12030810230/12030810230.pdf>.

<sup>4</sup> Referral at 1.

<sup>5</sup> See Committee Amended 2012 July Quarterly Report (Oct. 11, 2012), available at <http://docquery.fec.gov/pdf/564/12954317564/12954317564.pdf>.

<sup>6</sup> See Referral at 2.

1 by filing a Miscellaneous Electronic Submission ("Form 99"),<sup>7</sup> which asserted that the  
2 Committee was unable to produce the required 48-Hour Notice because it lacked the "day-by-  
3 day data of its expenditures or the in-kind support received from SEIU PEA for June [2012]."<sup>8</sup>  
4 The Committee also argued it would serve no purpose to try to produce this Notice after the  
5 fact.<sup>9</sup>

6 **B. Missing 48-Hour Reports Stemming from the Amended 2012 October**  
7 **Quarterly Report**  
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9 On February 14, 2013, the Committee filed an Amended 2012 October Quarterly Report  
10 covering the period from July 1, 2012, to September 30, 2012, which included a Schedule E  
11 disclosing 770 IEs totaling \$1,636,678.74, in support of four federal candidates.<sup>10</sup> On September  
12 4, 2013, RAD sent the Committee a RFAI regarding, among other things, the Committee's  
13 apparent failure to file fourteen 48-Hour Notices to support 227 IEs totaling \$327,094.33.<sup>11</sup> In  
14 response, the Committee filed a Form 99 on September 26, 2013, but it did not address these 227  
15 IEs.<sup>12</sup> Instead, the Committee focused on a different portion of the RFAI relating to 48-Hour  
16 Notices it filed for other independent expenditures that were not itemized on Schedule E of the

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<sup>7</sup> See Florida Freedom PAC, Form 99 (Feb. 14, 2013), available at <http://docquery.fec.gov/pdf/162/13960823162/13960823162.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Referral at 3.

<sup>11</sup> *Id.* As mentioned in note 1, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$319,077.65 for which 48-Hour Reports were not filed.

<sup>12</sup> See Florida Freedom PAC, Form 99 (Sept. 26, 2013), available at <http://docquery.fec.gov/pdf/451/13941667451/13941667451.pdf>.

2012 Amended October Quarterly Report.<sup>13</sup> The Committee explained that it estimated its expenses for canvassing activity on those 48-hour notices and then disclosed its actual expenses on the amended October report.”<sup>14</sup>

**C. Missing and Late 24-Hour Reports Stemming from the Amended 2012 30-Day Post-General Report**

On February 14, 2013, the Committee filed an Amended 2012 30-Day Post-General Report covering the period from October 18, 2012 to November 26, 2012, which included a Schedule E disclosing 1,412 IEs, totaling \$158,995.32. On August 1, 2013, RAD sent an RFAI to the Committee noting that the Committee may have failed to file 24-Hour Reports for 186 IEs, totaling \$25,356.52, and untimely filed 24-Hour Reports for 7 IEs, totaling \$49,270.40.<sup>15</sup>

On August 29, 2013, the Committee filed a Form 99 response to the RFAI referencing the Amended 2012 30-Day Post-General Report.<sup>16</sup> The Committee noted that the “Commission has asked about 48-hour notices disclosed on Schedule E that appear to not have been filed,” but did not explain why it failed to file the 48-Hour Reports.<sup>17</sup> Instead, the Committee again explained that it filed 48-Hour Reports with estimated expenditures for other IEs not at issue in this referral and then disclosed actual expenses on the Amended 2012 30-Day Post-General

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Referral. See Referral. *Id.* As mentioned in note 1, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$25,160.16 for which 24-Hour Reports were not filed.

<sup>16</sup> See Florida Freedom PAC, Form 99 (Aug. 29, 2013), available at <http://docquery.fec.gov/pdf/091/139414777091/13941477091.pdf>.

<sup>17</sup> *Id.*

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Report.<sup>18</sup> As for the seven IEs that the Committee reported late, the Committee conceded that it should have filed timely 24-Hour Reports.<sup>19</sup>

#### D. Referral and Committee Response

RAD referred FFPAC to OGC for its failure to file or timely file: (A) 24-Hour Reports for 193 IEs totaling \$74,626.88, and (B) 48-Hour Reports for 228 IEs totaling \$538,009.85.<sup>20</sup>

OGC notified the Committee of the referral on May 8, 2015.<sup>21</sup> In its response, FFPAC relies on its previous explanations to the RFAs regarding its use of estimates on IE reports and actual expenses in later reports. Specifically, it argues that “the nature of [the Committee’s] canvassing and similar grassroots-based electoral efforts make it impossible to provide perfect reporting in the timeframe required by statute and Commission regulation.”<sup>22</sup> The Committee does acknowledge “some failures to file complete or timely reports.” It also expressed a willingness to conciliate this matter.<sup>23</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Reports Analysis Division (“RAD”), Referral of Florida Freedom PAC, 15L-13 (May 5, 2015) (“Referral”), incorporated herein by reference. The Referral initially reflected independent expenditures totaling \$612,636.77. RAD subsequently adjusted the total figure to \$604,423.73 after discovering that some independent expenditures were referenced in error.

<sup>21</sup> Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Gihan Perera, Treasurer of the Committee (May. 8, 2015); see also *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

<sup>22</sup> Committee Resp. at 1. The Committee continued, “[w]ith dozens of canvassers (including contributed in-kind support from allied organizations) often working differing shifts on multiple races around the state of Florida, no organization would be able to file in a timely fashion accurate 24- and 48-Hour reports listing compensation for each canvasser. . . . Therefore, FFP[AC] sought to provide good faith estimates at the beginning of its electoral efforts of the amounts to be paid in each race and then provided more accurate information in reports filed later. . . *Id.*

<sup>23</sup> *Id.* at 2.

### III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.

§ 30104(b).<sup>24</sup> This requirement includes reporting IEs made by political committees other than authorized committees.<sup>25</sup> Every political committee that makes IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).<sup>26</sup> In addition, political committees that make IEs aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election, must disclose them within 24 hours following the date of dissemination.<sup>27</sup> These reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or contracts to make IEs aggregating an additional \$1,000.<sup>28</sup>

A political committee that makes or contracts to make IEs aggregating \$10,000 or more in connection with a given election at any time during a calendar year up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48

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<sup>24</sup> 52 U.S.C. § 30104(a)(1).

<sup>25</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

<sup>26</sup> 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report also must disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, *see also* 11 C.F.R. § 104.3(b)(3)(vii).

<sup>27</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

<sup>28</sup> 11 C.F.R. § 104.4(c).



1 hours.<sup>29</sup> These reports, known as 48-Hour Reports, must be filed by the end of the second day  
2 “following the date on which a communication that constitutes an IE is publicly distributed or  
3 otherwise publicly disseminated.”<sup>30</sup> A committee is required to file additional reports within 48  
4 hours after each time it makes or contracts to make IEs aggregating an additional \$10,000.<sup>31</sup>

5 The Committee did not file or it untimely filed thirteen 24-Hour Reports for 187 IEs and  
6 eleven 48-Hour Reports of for 194 IEs totaling \$604,423.73. Respondents concede that “some  
7 failures to file complete or timely” reports occurred, but argue that it was impossible to provide  
8 “perfect” reporting in the time the Act requires. They also maintain that estimating IEs on 24-  
9 and 48-Hour Reports and then disclosing the correct amount on Schedule E of the subsequent  
10 quarterly report meets the policy goals of the reporting requirements by providing timely notice  
11 of the targets and amounts of IEs and disbursements, even if specific information is not yet  
12 available.<sup>32</sup>

13 But FFPAC’s argument does not apply to the activity in the Referral. The Committee did  
14 not file timely 24- and 48-Hour Reports for *any* of the IEs at issue in the Referral, so the public  
15 was deprived of all information regarding these expenditures, whether estimated or actual. Of  
16 the 381 IEs at issue in the Referral, the Committee filed the required reports concerning only  
17 seven of them. In addition, all six of the reports the Committee filed regarding those seven IEs  
18 were filed late, after the 2012 general election.

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<sup>29</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

<sup>30</sup> 11 C.F.R. § 104.4(b)(2).

<sup>31</sup> *Id.*

<sup>32</sup> Committee Resp. at 2.

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1 In addition, the Committee's explanation regarding its use of estimates for other IEs not  
2 at issue in the referral undermines its position regarding the expenditures included in the referral.  
3 In other words, if the Committee could estimate its IEs on other 24- and 48-Hour Reports, it was  
4 clearly possible to estimate the IEs identified in the Referral. Yet it did not do so, nor does it  
5 explain why it could not. Thus, FFPAC has not presented any valid reason to justify its failure to  
6 file or timely file the required 24-Hour Reports. Accordingly, The Commission finds reason to  
7 believe that FFPAC violated 52 U.S.C. § 30104(g).

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